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FRESENIUS MEDICAL CARE NORTH AMERICA, INC., FRESENIUS USA,
INC., FRESENIUS USA MANUFACTURING, INC., and FRESENIUS USA
MARKETING, INC.

13 UNITED STATES DISTRICT COURT

14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 JEFF JENKINS, and MARY ELEANOR
JENKINS, individually and on behalf of
17 the Estate of BILLY JOE JENKINS;
MARILYN BAUMGARDEN,
18 individually and on behalf of the Estate
of DONALD EUGENE
19 KAMPHEFNER; SUZETTE ABBOTT,
individually and on behalf of the Estate
20 of JOSEPH KIDA; DIANE
WILKERSON, individually and on
21 behalf of the Estate of ALMA LOWE;
MARLENE MANLEY, individually and
22 on behalf of the Estate of JAY PETE
MANLEY, JR.; SHALESE VAULX,
individually and on behalf of the Estate
23 of VERINDA ELIZABETH
MATTHEWS; JOSEPH MCKINNEY,
individually and on behalf of the Estate
25 of LUETANGER MCKINNEY;
HORTENSE MILLER, individually and
26 on behalf of the Estate of NAPOLEON
MILLER;

File No. CV14-02933-JFW(MRW)
NOTICE OF REMOVAL UNDER 28
U.S.C. § 1441(b) (DIVERSITY
JURISDICTION)

1 Plaintiffs,

2 vs

3 FRESENIUS MEDICAL CARE
4 HOLDING, INC., FRESENIUS
5 MEDICAL CARE HOLDINGS, INC.
6 d/b/a FRESENIUS MEDICAL CARE
7 NORTH AMERICA, INC., FRESENIUS
8 USA, INC., FRESENIUS USA
MANUFACTURING, INC.,
FRESENIUS USA MARKETING, INC.,
FRESENIUS USA SALES, INC.,
WALTER L. WEISMAN, and DOES 1-
50, Inclusive,

9 Defendants.

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1
NOTICE OF REMOVAL
2

3 Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants Fresenius
4 Medical Care Holdings, Inc. (improperly named in the Complaint as “Fresenius
5 Medical Care Holding, Inc.”), Fresenius USA, Inc., Fresenius USA Manufacturing,
6 Inc., and Fresenius USA Marketing, Inc. (collectively “the Fresenius Defendants”)¹
7 hereby remove this civil action from the Superior Court of California for the
8 County of Los Angeles, where it is currently pending as Case No. BC40725, to the
9 United States District Court for the Central District of California, Western
10 Division. This Court has jurisdiction under Section 1332 because the amount-in-
11 controversy requirement is satisfied and the parties are diverse in citizenship.
12 Removal is not barred by Section 1441(b)(2)—the “forum defendant rule”—
13 because the only California defendant, Walter Weisman, is not properly joined.

14
BACKGROUND
15

16 1. This case is one of over 1,500 similar product liability actions filed
17 against Fresenius entities alleging injuries sustained as a result of the use of
18 NaturaLyte and/or GranuFlo—products used in hemodialysis treatment. Almost
19 all of those cases are now pending in the multidistrict-litigation proceeding styled
20 *In re Fresenius/NaturaLyte Dialysate Prods. Liab. Litig.*, No. 1:13-md-02428-
21 DPW (D. Mass.) (the “MDL”).

22 2. As shown in the Notice of Pendency of Other Actions or Proceedings
23 (filed herewith), the MDL now includes more than 30 cases transferred from
24 California district courts. Of those 30 California cases, approximately 20 were
25 removed from state courts based on diversity jurisdiction and then transferred to
26 the MDL. Because the allegations in this case are the same as, or similar to, the
27 allegations in the hundreds of cases pending in the MDL, the Fresenius Defendants
28

will identify this case to the JPML as a potential tag-along case that should be transferred to the MDL.

3 3. In this District, NaturaLyte/GranuFlo actions typically have been
4 assigned (or re-assigned pursuant to General Order 08-05) to Judge Bernal.

5 4. Plaintiffs commenced this NaturaLyte/GranuFlo action on March 27,
6 2014, by filing a Complaint in the Superior Court of California for the County of
7 Los Angeles. Plaintiffs served a copy of the summons and Complaint on Fresenius
8 Medical Care Holdings, Inc. d/b/a Fresenius Medical Care North America on April
9 3, 2014. The other defendants have not been served.

10 5. Plaintiffs allege that the Decedents sustained injuries after receiving
11 dialysis treatments using NaturaLyte and/or GranuFlo. [Ex. A², Compl. ¶¶ 7-30.]
12 Plaintiffs assert claims against the Fresenius Defendants and Walter Weisman for
13 negligence, strict products liability, breach of express and implied warranty,
14 fraudulent representation, negligent misrepresentation, wrongful death, and
15 survival. [Ex. A, Compl. ¶¶ 130-190.] Plaintiffs seek to recover for compensatory
16 damages, costs and expenses associated with Decedents' deaths, past and future
17 medical expenses, past and future lost wages and loss of earning capacity, past and
18 future emotional distress, loss of enjoyment of life, consequential damages,
19 restitution, injunctive relief, punitive damages, attorneys' fees, costs, interest, and
20 other relief. [*Id.* pp. 33-34.]

GROUNDS FOR REMOVAL

22 6. As shown in more detail below, this Court has subject matter
23 jurisdiction under 28 U.S.C. § 1332, which confers original jurisdiction of “all civil
24 actions where the matter in controversy exceeds the sum or value of \$75,000,

¹ The Complaint also names Fresenius USA Sales, Inc. as a defendant. Fresenius USA Sales, Inc. was dissolved in March 2010.

² All citations to “Exhibits” are citations to the exhibits to the Declaration of Tamara Fraizer in Support of Notice of Removal, filed herewith.

1 exclusive of interest and costs, and is between . . . citizens of different States.”
2 Removal is not barred by the forum-defendant rule set forth in 28 U.S.C.
3 § 1441(b)(2) because the only California defendant, Mr. Weisman, has been
4 fraudulently joined.

5 **I. THE AMOUNT-IN-CONTROVERSY REQUIREMENT IS
SATISFIED.**

6 7. The amount in controversy exceeds \$75,000, exclusive of interest and
7 costs. Plaintiffs seek to recover for compensatory damages, costs and expenses
8 associated with Decedents’ death, past and future medical expenses, past and
9 future lost wages and loss of earning capacity, past and future emotional distress,
10 loss of enjoyment of life, consequential damages, restitution, injunctive relief,
11 punitive damages, attorneys’ fees, costs, interest, and other relief. [Ex. A, Compl.
12 pp. 33-34.] The Complaint does not state a specific amount demanded. *See Cal.*
13 *Code Civ. Proc. § 425.10* (stating that “the amount demanded shall not be stated”
14 for an action “brought to recover actual or punitive damages for personal injury or
15 wrongful death”).

16 8. Where, as here, the complaint does not specify the amount of damages
17 plaintiffs seek, the court must determine whether it is “facially apparent from the
18 complaint that the jurisdictional amount is in controversy.” *Singer v. State Farm*
19 *Mut. Auto Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997) (internal quotations omitted);
20 *accord Titans Trading Corp. v. JTS Express*, No. CV 09-00714 MMM (RCX),
21 2009 WL 537515, at *5 (C.D. Cal. Mar. 3, 2009). “If not, the court may consider
22 facts in the removal petition, and may ‘require parties to submit summary-
23 judgment-type evidence relevant to the amount in controversy at the time of
24 removal.’ *Singer*, 116 F.3d at 1335-36.

25 9. Here, Plaintiffs are seeking to recover for personal injuries and
26 wrongful death. [Ex. A, Compl. ¶¶ 130-190.] In such cases, it is facially apparent
27

1 that the amount in controversy exceeds \$75,000. *See, e.g., Kammerdiener v. Ford*
2 *Motor Co.*, No. CV 09–2180, 2010 WL 682297, at *2 (C.D. Cal. Feb. 24, 2010)
3 (“That Plaintiffs are seeking recovery for wrongful death is sufficient to establish
4 that the amount in controversy exceeds \$75,000 on the face of the Complaint.”);
5 *see also Corbelle v. Sanyo Elec. Trading Co.*, No. C-03-1509 EMC, 2003 WL
6 22682464, at *3 (N.D. Cal. Nov. 4, 2003) (“This is not a case where the complaint
7 alleges wrongful death or permanent disability or other such facts that would
8 clearly establish an amount in controversy in excess of \$75,000.”).

9 10. Furthermore, Plaintiffs are seeking punitive damages, which are to be
10 included in calculating the amount in controversy. *Gibson v. Chrysler Corp.*, 261
11 F.3d 927, 945 (9th Cir. 2001) (“It is well established that punitive damages are part
12 of the amount in controversy in a civil action.”); *accord Romo v. FFG Ins. Co.*,
13 397 F. Supp. 2d 1237, 1240 (C.D. Cal. 2005) (“In an amount in controversy
14 inquiry for diversity purposes, punitive damages, where authorized, are counted
15 toward the requirement.”).

16 11. Thus, because it is “facially apparent” from the Complaint that
17 Plaintiffs seek more than \$75,000, the amount-in-controversy requirement is
18 satisfied.

19 **II. THE PARTIES ARE DIVERSE.**

20 12. Plaintiffs Jeff Jenkins and Mary Eleanor Jenkins are citizens of
21 Colorado, as was Decedent Billy Joe Jenkins. [Ex. A, Compl. ¶¶ 7-8.]

22 13. Plaintiff Marilyn Baumgarden is, and Decedent Donald Eugene
23 Kamphefner was, a citizen of Missouri. [*Id.* at ¶¶ 10-11.]

24 14. Plaintiff Suzette Abbot is a citizen of Georgia, and Decedent Joseph
25 Kida was a citizen of Michigan. [*Id.* at ¶¶ 13-14.]

26 15. Plaintiff Diane Wilkerson is, and Decedent Alma Lowe was, a citizen
27 of Virginia. [*Id.* at ¶¶ 16-17.]

1 16. Plaintiff Marlene Manley is, and Decedent Jay Pete Manley Jr. was, a
2 citizen of Ohio. [*Id.* at ¶¶ 19-20.]

3 17. Plaintiff Shalese Vaulx is, and Decedent Verinda Elizabeth Matthews
4 was, a citizen of Minnesota. [*Id.* at ¶¶ 22-23.]

5 18. Plaintiff Joseph McKinney is, and Decedent Luetanger McKinney
6 was, a citizen of Alabama. [*Id.* at ¶¶ 25-26.]

7 19. Plaintiff Hortense Miller is, and Decedent Napoleon Miller was, a
8 citizen of Michigan. [*Id.* at ¶¶ 28-29.]

9 20. Fresenius Medical Care Holdings, Inc. d/b/a Fresenius Medical Care
10 North America is a corporation organized under the laws of New York with its
11 principal place of business in Massachusetts. [Ex. A, Compl. ¶ 32.] Fresenius
12 Medical Care Holdings, Inc. is therefore a citizen of New York and Massachusetts
13 for purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1). Fresenius
14 Medical Care Holdings, Inc. is not now, and was not at the time of the filing of the
15 Complaint and all intervening times, a citizen of Colorado, Missouri, Georgia,
16 Michigan, Virginia, Ohio, Minnesota, or Alabama.

17 21. Fresenius USA, Inc. is a corporation organized under the laws of
18 Massachusetts with its principal place of business in Massachusetts. [Ex. A,
19 Compl. ¶ 33.] Fresenius USA, Inc. is therefore a citizen of Massachusetts for
20 purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1). Fresenius USA,
21 Inc. is not now, and was not at the time of the filing of the Complaint and all
22 intervening times, a citizen of Colorado, Missouri, Georgia, Michigan, Virginia,
23 Ohio, Minnesota, or Alabama.

24 22. Fresenius USA Manufacturing, Inc. is a corporation organized under
25 the laws of Delaware with its principal place of business in Massachusetts. [Ex. A,
26 Compl. ¶ 34.] Fresenius USA Manufacturing, Inc. is therefore a citizen of
27 Delaware and Massachusetts for purposes of diversity jurisdiction. *See* 28 U.S.C.
28

1 § 1332(c)(1). Fresenius USA Manufacturing, Inc. is not now, and was not at the
2 time of the filing of the Complaint and all intervening times, a citizen of Colorado,
3 Missouri, Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

4 23. Fresenius USA Marketing, Inc. is a corporation organized under the
5 laws of Delaware with its principal place of business in Massachusetts. [Ex. A,
6 Compl. ¶ 35.] Fresenius USA Marketing, Inc. is therefore a citizen of Delaware
7 and Massachusetts for purposes of diversity jurisdiction. *See* 28 U.S.C.

8 § 1332(c)(1). Fresenius USA Marketing, Inc. is not now, and was not at the time
9 of the filing of the Complaint and all intervening times, a citizen of Colorado,
10 Missouri, Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

11 24. Defendant Walter Weisman is a citizen of California [*Id.* at ¶ 38], not
12 Colorado, Missouri, Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

13 25. The Complaint also names Doe Defendants who are unnamed
14 defendants that are allegedly “responsible in some manner for the events and
15 happenings.” [Ex. A, Compl. ¶ 41.] Under 28 U.S.C. § 1441(b)(1), “the
16 citizenship of defendants sued under fictitious names shall be disregarded.” Thus,
17 the citizenship of the Doe Defendants is not considered in determining diversity.

18 *See Olive v. Gen. Nutrition Ctrs., Inc.*, No. 2:12-cv-04297-ODW, 2012 WL
19 2006389, at *1 (C.D. Cal. June 5, 2012); *Marsikyan v. Porsche Cars N. Am., Inc.*,
20 No. CV 11-09411 SJO, 2012 WL 280585, at *2 (C.D. Cal. Jan. 30, 2012).

21 26. Accordingly, there is complete diversity of citizenship between
22 Plaintiff and all the Defendants.

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1 **III. IN ANY EVENT, MR. WEISMAN'S CITIZENSHIP SHOULD NOT**
2 **BE CONSIDERED BECAUSE HE HAS BEEN FRAUDULENTLY**
3 **JOINED.**

4 27. The Court need not consider Mr. Weisman's California citizenship
5 because he has been fraudulently joined as a defendant.³

6 28. The Ninth Circuit has held that fraudulent joinder occurs where "the
7 plaintiff fails to state a cause of action against a resident defendant, and the failure
8 is obvious according to the settled rules of the state." *Morris v. Princess Cruises,*
Inc., 236 F.3d 1061, 1067 (9th Cir. 2001) (quotations omitted).

9 29. Here, Plaintiffs have failed to allege sufficient facts to state a cause of
10 action against Mr. Weisman. This is a product liability action relating to
11 "NaturaLyte Liquid Acid Concentrate (hereafter 'NaturaLyte') and/or GranuFlo
12 Acid Concentrate (hereafter 'GranuFlo') used during hemodialysis treatment."
13 [Ex. A, Compl. ¶ 1.]

14 30. The individual allegations against Mr. Weisman are limited to three
15 paragraphs, which state:

16 Walter L. Weisman (hereinafter also referred to as "Weisman") is, and
17 at all times relevant was, a resident of the County of Los Angeles,
18 State of California. Mr. Weisman is, and at all times relevant was, a
19 member of the Supervisory Board for Fresenius Medical Care in Los
20 Angeles, California and has held that position since 1996. Mr.
21 Weisman is also a Member of the Supervisory Board at Management
22 AG - General Partner of Fresenius Medical Care, is the Chairman of
23 the Audit and Corporate Governance Committee of Fresenius Medical
24 Care, a member of the Joint Committee of Fresenius Medical Care
25 and a member of the Nomination Committee of Fresenius Medical
26 Care. At all times relevant, the Supervisory Board, Audit and
27 Governance Committee and Joint Committee, which Mr. Weisman
28 was a member of, managed, supervised and controlled all the North
American Fresenius business entities.⁴

24 ³ The MDL court (Judge Woodlock) is considering this same issue in
25 connection with an omnibus motion to remand filed in several California cases in
26 the MDL proceeding. The parties conducted discovery on this issue, and Judge
27 Woodlock held a hearing on February 3, 2014. His ruling on this issue is expected
soon.

28 ⁴ Paragraph 38 is misleadingly incorrect in many respects. Most
particularly, the company for which Mr. Weisman serves as a member of the
Supervisory Board is Fresenius Medical Care AG & Co. KGaA, a German indirect
Notice of Removal

At all times relevant, Mr. Weisman, had oversight, management and knowledge of the defective nature of GranuFlo® and NaturaLyte®, but deliberately and/or negligently failed to advise the public, health care providers, including Plaintiffs and Plaintiffs' treating physicians, of these defects, despite having the duty to do so, as well as having the ability to effectuate the decision to implement GranuFlo and NaturaLyte without providing the appropriate warnings. Mr. Weisman knowingly and intentionally suppressed material facts and deliberately obfuscated the instructions and warnings of GranuFlo and NaturaLyte for the purpose, in part, of increasing sales and profits.

Defendant Weisman's compensation as an officer, director and committee member of Fresenius Medical Care are commensurate with the sales and profitability of Fresenius, including the sales and profits from GranuFlo® and NaturaLyte®, and as a member of Fresenius's Board. Defendant Weisman holds and has been granted significant stock positions and options in Fresenius, based on its profitability, including the sales and profits of GranuFlo® and NaturaLyte®. Defendant Weisman held the same corporate governance positions during the time Defendants were operating under a Corporate Integrity Agreement, which related to the management of Fresenius Clinics.

[*Id.* ¶ 38-40.] The Complaint fails to provide any additional facts regarding Mr. Weisman's alleged liability. For example, the Complaint nowhere alleges that Mr. Weisman treated any of the Decedents or had a relationship with any of them. Likewise, the Complaint nowhere alleges that Mr. Weisman had any relationship with the medical facilities in which the Decedents were allegedly treated or with any of the named Fresenius Defendants in this case.

31. In sum, the Complaint contains no factual allegations that could support the legal conclusion that Mr. Weisman owed a duty to Plaintiffs or Decedents. Setting aside the "general and conclusory" allegations of misconduct,

parent company of defendant Fresenius Medical Care Holdings, Inc. The Complaint tries to obscure the distinction between those two entities by using the confusingly shortened reference "Fresenius Medical Care in Los Angeles" to identify Mr. Weisman's affiliation. [Ex. A, Compl. ¶ 38.] Paragraph 38 would be more accurate if the full name, "Fresenius Medical Care AG & Co. KGaA," were substituted for "Fresenius Medical Care in Los Angeles." But this correction would be destructive of Plaintiffs' case against Mr. Weisman because the German company is not involved in the manufacture, development, promotion, or sale of GranuFlo or NaturaLyte. The statements in this paragraph represent nothing more

1 Plaintiffs have failed to state a claim against Mr. Weisman. *Fisher v. Paul Revere*
2 *Ins. Group*, 55 Fed. App'x 412, 414 (9th Cir. 2002) (unpublished) (a non-diverse
3 defendant was fraudulently joined where the plaintiff did not specifically allege
4 facts that would support any of the elements of plaintiff's state law claim); *see also*
5 *Mass. Eye & Ear Infirmary v. Eugene B. Casey Found.*, 417 F. Supp. 2d 192, 194
6 (D. Mass. 2006) (ignoring fraudulently joined defendant's citizenship because
7 defendant was only mentioned in two of the paragraphs in the complaint and there
8 was no allegation about how defendant caused plaintiff any harm).

9 32. The Complaint's references to "Defendants" collectively are not
10 sufficient to state causes of action against Mr. Weisman specifically. Federal
11 courts, including those in California, have held that a plaintiff cannot defeat a
12 fraudulent joinder argument by pointing to factual allegations attributing
13 wrongdoing to all defendants collectively. *See, e.g., Shah v. Wyeth Pharms., Inc.*,
14 No. CV 04-8652 DT MAN, 2005 WL 6731641, at *3 (C.D. Cal. Jan. 18, 2005);
15 *Bennett v. Allstate Ins. Co.*, 753 F. Supp. 299, 301 (N.D. Cal. 1990) (denying
16 motion to remand because, *inter alia*, plaintiff's complaint made "no attempt" to
17 "differentiate between the conduct" of the defendants); *see also Beavers v. DePuy*
18 *Orthopaedics, Inc.*, No. 1:11 dp 20275, 2012 WL 1945603, at *5 (N.D. Ohio May
19 30, 2012); *Oshima v. Kia Motors Corp.*, No. 11-cv-03349-REB-MEH, 2012 WL
20 1578397, at *5-7 (D. Colo. May 4, 2012); *Cranston v. Mariner Healthcare Mgmt.*
21 Co., No. 3:03CV10-D-A, 2003 WL 21517999, at *3-4 (N.D. Miss. June 18,
22 2003); *In re Rezulin Prods. Liab. Litig.*, 168 F. Supp. 2d 136, 140 (S.D.N.Y. 2001);
23 *Salisbury v. Purdue Pharma, L.P.*, 166 F. Supp. 2d 546, 550 (E.D. Ky. 2001);
24 *Addison v. Allstate Ins. Co.*, 58 F. Supp. 2d 729, 732-33 (S.D. Miss. 1999).

25 33. For example, the court in *Shah* held that a non-diverse defendant was
26

27 than vague attempts to obscure the differences between the separate German and
American corporate entities.

1 fraudulently joined because “allegations against ‘defendants’ collectively are
2 insufficient to warrant remand, especially when Plaintiffs fail to allege any
3 ‘particular or specific activity’” on the part of each of the non-diverse defendants.

4 *Shah*, 2005 WL 6731641, at *3. Here, “although [the] complaint commonly
5 employs the generic term ‘defendants,’ the context and nature of the individual
6 allegations make clear that only [the Fresenius entities] are targeted.” *Salisbury*,
7 166 F. Supp. 2d at 550.

8 34. Moreover, Mr. Weisman previously submitted a declaration in a
9 similar product liability action concerning GranuFlo and NaturaLyte, *Nunez v.*
10 *Fresenius USA, Inc.*, Case No. 2:13-cv-02729-JGP-OP, Doc. No. 12-5 (C.D. Cal.
11 June 17, 2013). That case asserts similar claims against the same Fresenius entities
12 and Mr. Weisman. Mr. Weisman’s declaration states, among other things, that:

- 13 a. he is not an executive, officer, director, board member, or employee
14 of any of the named Fresenius Defendants;
- 15 b. as a board member of Fresenius Medical Care AG & Co. KGaA (a
16 German holding company), he has no oversight of the day-to-day
17 affairs and operations of its operating indirect subsidiaries and no
18 direct involvement with any U.S. subsidiaries;
- 19 c. he has never heard of an entity called “Fresenius Medical Care for Los
20 Angeles, California” and is not an officer or director of any such
21 entity; and
- 22 d. he had not heard of the existence of NaturaLyte or GranuFlo until
23 after the alleged issues related to those products became public
24 knowledge in June of 2012.

25 [See Ex. B (Decl. of Walter L. Weisman, *Nunez v. Fresenius USA, Inc.*, Case No.
26 2:13-cv-02729-JGP-OP, Doc. No. 25-1 (C.D. Cal. June 17, 2013)) ¶¶ 2-10.]

- 27 35. Mr. Weisman submitted an additional declaration in the MDL

proceeding, which also demonstrates that he is not an officer or director of any Fresenius entity named as a Defendant in this case and had no knowledge of NaturalLyte or GranuFlo before 2012. [See Ex. C ¶¶ 1-13.]

36. In sum, the Complaint fails to allege facts sufficient to state a cause of action against Mr. Weisman specifically, and his declarations establish that no potential basis for the alleged claims exists. Thus, Mr. Weisman has been fraudulently joined, and he is not a “properly joined” defendant whose presence in the case precludes removal under Section 1441(b)(2).

IV. THE OTHER PREREQUISITES FOR REMOVAL ARE SATISFIED.

37. This Notice of Removal is timely filed. The statute provides that “[e]ach defendant shall have 30 days after receipt . . . of the initial pleading . . . to file a notice of removal.” 28 U.S.C. § 1446(b)(2)(B). Fresenius Medical Care Holdings, Inc. was served on April 3, 2014. This Notice of Removal is timely filed within 30 days of service on this Defendant.

38. All properly joined and served defendants join in this removal. See 28 U.S.C. § 1446(b)(2)(A). The joinder or consent of Mr. Weisman is not necessary because he has been fraudulently joined as a defendant, and also because he has not been served. See *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir. 1988); *AGI Publishing, Inc. v. HR Staffing, Inc.*, No. 1:12-cv-00879, 2012 WL 3260519, at *2 (E.D. Cal. Aug. 8, 2012); *Simpson v. Union Pac. R. Co.*, 282 F. Supp. 2d 1151, 1158 (N.D. Cal. 2003), *Tsang v. Select Portfolio Serv., Inc.*, No. EDCV 12-00127 VAP, 2012 WL 10423187, at *6 (C.D. Cal. Aug. 3, 2012).

39. This action is properly removed to the United States District Court for the Central District of California, which is “the district . . . embracing the place where [the] action is pending.” 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 84(d) (listing the counties within the Central District of California).

40. Pursuant to 28 U.S.C. § 1446(a), a copy of all process, pleadings and

orders served upon the Fresenius Defendants, including the summons and Complaint, is attached hereto as Exhibit A.

41. Pursuant to 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal, attached hereto as Exhibit D, together with the Notice of Removal, will be served upon Plaintiffs' counsel and will be filed with the clerk of the Superior Court for the County of Los Angeles.

If any question arises as to the propriety of the removal of this action, the Fresenius Defendants respectfully request the opportunity to submit briefing and oral argument and to conduct discovery in support of its position that subject matter jurisdiction exists.

Dated: April 16, 2014

Respectfully Submitted,

/s/ Tamara Fraizer
Tamara Fraizer (SBN 215942)
Fish & Richardson P.C.
500 Arguello Street, Suite 500
Redwood City, CA 94063
Telephone: (650) 839-5070
Facsimile: (650) 839-5071
fraizer@fr.com

Counsel for Defendants
FRESENIUS MEDICAL CARE
HOLDINGS, INC.; FRESENIUS
MEDICAL CARE NORTH AMERICA,
INC.; FRESENIUS USA, INC.;
FRESENIUS USA
MANUFACTURING, INC.;
FRESENIUS USA MARKETING, INC.

PROOF OF SERVICE

I am employed in the County of San Mateo. My business address is Fish & Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, California 94063. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On April 16, 2014, I served a copy of the foregoing document(s) on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

Counsel for Plaintiff:

Hector G. Gancedo (SBN 132139)
GANCEDO LAW FIRM, INC.
130 S. Euclid Avenue, Suite 2
Pasadena, CA 91101
Telephone: (626) 577-2500
Fax: (626) 577-2555

Stephen C. Ball (SBN 119463)
BALL & BONHOLTZER
300 North Lake Avenue, Suite 1000
Pasadena, CA 91101
Telephone: (626) 793-2117
Fax: (626) 793-3198

MAIL:

Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.

PERSONAL:

Such envelope was delivered by hand to the offices of the addressee.

FACSIMILE:

Such document was faxed to the facsimile transmission machine with the facsimile machine number stated above. Upon completion of the transmission, the transmitting machine issued a transmission report showing the transmission was complete and without error.

E-MAIL:

Such document was transmitted by electronic mail to the addressees' email addresses as stated above.

XX FEDERAL EXPRESS:

Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express.

EXPRESS MAIL:

Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by the United States Postal Service.

OVERNIGHT DELIVERY: Such correspondence was given on the same day in the ordinary course of business to an authorized courier or a driver authorized by that courier to receive documents.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct.
Executed on April 16, 2014, at Redwood City, California.

/s/ Cecilia Acosta
Cecilia Acosta

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been assigned to District Judge John F. Walter and to
Magistrate Judge Michael R. Wilner.

The case number on all documents filed with the Court should read as follows:

2:14-cv-02933-JFW(MRWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the assigned Magistrate Judge has been designated to hear discovery-related motions. All discovery-related motions should be noticed on the calendar of the Magistrate Judge.

Clerk, U. S. District Court

April 16, 2014
Date

By APEDRO
Deputy Clerk

ATTENTION

A copy of this Notice must be served on all parties served with the Summons and Complaint (or, in cases removed from state court, on all parties served with the Notice of Removal) by the party who filed the Complaint (or Notice of Removal).

COPY
UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

BY FAX

I. (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) Jeff Jenkins and Mary Eleanor Jenkins, individually and on behalf of the Estate of Billy Joe Jenkins, et al. (See Attachment A for additional Plaintiffs)	DEFENDANTS (Check box if you are representing yourself <input type="checkbox"/>) Fresenius Medical Care Holding, Inc., et al. (See Attachment B for additional Defendants)																											
(b) County of Residence of First Listed Plaintiff Jefferson Co., AR <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i>	County of Residence of First Listed Defendant _____																											
(c) Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Hector G. Gancedo (SBN 132139) GANCEDO LAW FIRM, INC. 130 S. Euclid Avenue, Suite 2 Pasadena, CA 91101 Tel: (626) 577-2500	Attorneys (Firm Name, Address and Telephone Number) If you are representing yourself, provide the same information. Tamara Fraizer Fish & Richardson P.C. 500 Arguello Street, Suite 500 Redwood City, CA 94063 Tel: (650) 839-5070																											
II. BASIS OF JURISDICTION (Place an X in one box only.)																												
<input type="checkbox"/> 1. U.S. Government Plaintiff	<input type="checkbox"/> 3. Federal Question (U.S. Government Not a Party)																											
<input type="checkbox"/> 2. U.S. Government Defendant	<input checked="" type="checkbox"/> 4. Diversity (Indicate Citizenship of Parties in Item III)																											
III. CITIZENSHIP OF PRINCIPAL PARTIES -For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)																												
Citizen of This State	<input type="checkbox"/> PTF <input type="checkbox"/> DEF 1 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> PTF <input type="checkbox"/> DEF 4 4																									
Citizen of Another State	<input checked="" type="checkbox"/> PTF <input type="checkbox"/> DEF 2 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> PTF <input checked="" type="checkbox"/> DEF 5 5																									
Citizen or Subject of a Foreign Country	<input type="checkbox"/> PTF <input type="checkbox"/> DEF 3 3	Foreign Nation	<input type="checkbox"/> PTF <input type="checkbox"/> DEF 6 6																									
IV. ORIGIN (Place an X in one box only.)		6. Multi-District Litigation																										
<input type="checkbox"/> 1. Original Proceeding	<input checked="" type="checkbox"/> 2. Removed from State Court	<input type="checkbox"/> 3. Remanded from Appellate Court	<input type="checkbox"/> 4. Reinstated or Reopened	<input type="checkbox"/> 5. Transferred from Another District (Specify) _____																								
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check "Yes" only if demanded in complaint.)																												
CLASS ACTION under F.R.Cv.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		MONEY DEMANDED IN COMPLAINT: \$ > \$75,000																										
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Removal of product-liability suit pursuant to 28 USC Section 1332 (Diversity Jurisdiction), and 28 USC Sections 1337, 1441, and 1446																												
VII. NATURE OF SUIT (Place an X in one box only).																												
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; vertical-align: top;"> CONTRACT <ul style="list-style-type: none"> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 420 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Admin. Procedures <input type="checkbox"/> Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes </td> <td style="width: 25%; vertical-align: top;"> PROPERTY <ul style="list-style-type: none"> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment </td> <td style="width: 25%; vertical-align: top;"> TORT <ul style="list-style-type: none"> <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle Product Liability <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 375 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage <input type="checkbox"/> 390 Other Personal Injury <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 </td> <td style="width: 25%; vertical-align: top;"> IMMIGRATION <ul style="list-style-type: none"> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions </td> <td style="width: 25%; vertical-align: top;"> HABEAS CORPUS <ul style="list-style-type: none"> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 550 General <input type="checkbox"/> 585 Death Penalty </td> <td style="width: 25%; vertical-align: top;"> PROPRIETARY <ul style="list-style-type: none"> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405 (g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405 (g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 </td> </tr> <tr> <td colspan="6" style="text-align: center;"> BANKRUPTCY </td> </tr> <tr> <td colspan="6"> CIVIL RIGHTS <ul style="list-style-type: none"> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accomodations <input type="checkbox"/> 445 American with Disabilities- Employment <input type="checkbox"/> 446 American with Disabilities-Other <input type="checkbox"/> 448 Education </td> </tr> <tr> <td colspan="6"> LABOR <ul style="list-style-type: none"> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Ret. Inc. Security Act </td> </tr> </table>					CONTRACT <ul style="list-style-type: none"> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 420 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/Etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Org. <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Admin. Procedures <input type="checkbox"/> Act/Review of Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes 	PROPERTY <ul style="list-style-type: none"> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Vet.) <input type="checkbox"/> 153 Recovery of Overpayment of Vet. 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FOR OFFICE USE ONLY:

Case Number:
0914 02933

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will most likely be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

Question A: Was this case removed from state court?	STATE CASE WAS PENDING IN THE COUNTY OF:	
	<input checked="" type="checkbox"/> Los Angeles <input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino	
If "no," go to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	<input checked="" type="checkbox"/> Western	
	<input type="checkbox"/> Western	
	<input type="checkbox"/> Southern	
	<input type="checkbox"/> Eastern	

Question B: Is the United States, or one of its agencies or employees, a party to this action?	If the United States, or one of its agencies or employees, is a party, is it:		INITIAL DIVISION IN CACD IS:
	<input type="checkbox"/> A PLAINTIFF? <input type="checkbox"/> A DEFENDANT?		
If "no," go to Question C. If "yes," check the box to the right that applies, enter the corresponding division in response to Question D, below, and skip to Section IX.	Then check the box below for the county in which the majority of DEFENDANTS reside.		Then check the box below for the county in which the majority of PLAINTIFFS reside.
	<input type="checkbox"/> Los Angeles <input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino <input type="checkbox"/> Other		<input type="checkbox"/> Los Angeles <input type="checkbox"/> Ventura, Santa Barbara, or San Luis Obispo <input type="checkbox"/> Orange <input type="checkbox"/> Riverside or San Bernardino <input type="checkbox"/> Other
			<input type="checkbox"/> Western
			<input type="checkbox"/> Western
			<input type="checkbox"/> Southern
			<input type="checkbox"/> Eastern
			<input type="checkbox"/> Western

Question C: Location of plaintiffs, defendants, and claims? (Make only one selection per row)	A. Los Angeles County	B. Ventura, Santa Barbara, or San Luis Obispo Counties	C. Orange County	D. Riverside or San Bernardino Counties	E. Outside the Central District of California	F. Other
Indicate the location in which a majority of plaintiffs reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of defendants reside:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Indicate the location in which a majority of claims arose:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

C.1. Is either of the following true? If so, check the one that applies:	C.2. Is either of the following true? If so, check the one that applies:
<input type="checkbox"/> 2 or more answers in Column C <input type="checkbox"/> only 1 answer in Column C and no answers in Column D	<input type="checkbox"/> 2 or more answers in Column D <input type="checkbox"/> only 1 answer in Column D and no answers in Column C
Your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question D, below. If none applies, answer question C2 to the right. →	Your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question D, below. If none applies, go to the box below. ↓
Your case will initially be assigned to the WESTERN DIVISION. Enter "Western" in response to Question D below.	

Question D: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, or C above: →	Western

IX(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? NO YES

If yes, list case number(s): _____

IX(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? NO YES

If yes, list case number(s): Please see Notice of Related Cases _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- A. Arise from the same or closely related transactions, happenings, or events; or
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

X. SIGNATURE OF ATTORNEY

(OR SELF-REPRESENTED LITIGANT): /s Tamara Fraizer

DATE: 4/16/2014

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

1 Juanita R. Brooks (SBN 75934)
2 brooks@fr.com
3 Roger A. Denning (SBN 228998)
denning@fr.com
4 Olga I. May (SBN 232012)
omay@fr.com
FISH & RICHARDSON P.C.
5 12390 El Camino Real
San Diego, California 92130-2081
Telephone: (858) 678-5070
6 Facsimile: (858) 678-5099

7 Tamara Fraizer (SBN 215942)
8 fraizer@fr.com
FISH & RICHARDSON, P.C.
9 500 Arguello Street, Suite 500
Redwood City, CA 94063
Telephone: (650) 839-5070
10 Facsimile: (650) 839-5071

11 Attorneys for Defendants FRESENIUS MEDICAL CARE HOLDINGS, INC.,
12 FRESENIUS MEDICAL CARE NORTH AMERICA, INC., FRESENIUS USA,
13 INC., FRESENIUS USA MANUFACTURING, INC., and FRESENIUS USA
MARKETING, INC.

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 JEFF JENKINS, and MARY ELEANOR
JENKINS, individually and on behalf of
17 the Estate of BILLY JOE JENKINS;
MARILYN BAUMGARDEN,
individually and on behalf of the Estate
18 of DONALD EUGENE
KAMPHEFNER; SUZETTE ABBOTT,
individually and on behalf of the Estate
of JOSEPH KIDA; DIANE
19 WILKERSON, individually and on
behalf of the Estate of ALMA LOWE;
MARLENE MANLEY, individually and
20 on behalf of the Estate of JAY PETE
MANLEY, JR.; SHALESE VAULX,
individually and on behalf of the Estate
21 of VERINDA ELIZABETH
MATTHEWS; JOSEPH MCKINNEY,
individually and on behalf of the Estate
22 of LUETANGER MCKINNEY;
HORTENSE MILLER, individually and
23 on behalf of the Estate of NAPOLEON
MILLER;

24 Case No. _____

25 **ATTACHMENT A TO CIVIL
COVER SHEET (LIST OF
PLAINTIFFS)**

26 Plaintiffs.

27
28

1 vs
2

3 FRESENIUS MEDICAL CARE
4 HOLDING, INC., FRESENIUS
5 MEDICAL CARE HOLDINGS, INC.
6 d/b/a FRESENIUS MEDICAL CARE
7 NORTH AMERICA, INC., FRESENIUS
8 USA, INC., FRESENIUS USA
9 MANUFACTURING, INC.,
FRESENIUS USA MARKETING, INC.,
FRESENIUS USA SALES, INC.,
WALTER L. WEISMAN, and DOES 1-
50, Inclusive,

10 Defendants.

11 1. JEFF JENKINS, and MARY ELEANOR JENKINS, individually and
12 on behalf of the Estate of BILLY JOE JENKINS;

13 2. MARILYN BAUMGARDEN, individually and on behalf of the
14 Estate of DONALD EUGENE KAMPHEFNER;

15 3. SUZETTE ABBOTT, individually and on behalf of the Estate of
16 JOSEPH KIDA;

17 4. DIANE WILKERSON, individually and on behalf of the Estate of
18 ALMA LOWE;

19 5. MARLENE MANLEY, individually and on behalf of the Estate of
20 JAY PETE MANLEY, JR.;

21 6. SHALESE VAULX, individually and on behalf of the Estate of
22 VERINDA ELIZABETH MATTHEWS;

23 7. JOSEPH MCKINNEY, individually and on behalf of the Estate of
24 LEUTANGER MCKINNEY;

25 8. HORTENSE MILLER, individually and on behalf of the Estate of
26 NAPOLEON MILLER.

1 Dated: April 16, 2014

Respectfully Submitted,

3 */s/ Tamara Fraizer*
4 Tamara Fraizer (SBN 215942)
5 Fish & Richardson P.C.
6 500 Arguello Street, Suite 500
Redwood City, CA 94063
Telephone: (650) 839-5070
Facsimile: (650) 839-5071
fraizer@fr.com

7 Counsel for Defendants
8 FRESENIUS MEDICAL CARE
9 HOLDINGS, INC.; FRESENIUS
MEDICAL CARE NORTH AMERICA,
INC.; FRESENIUS USA, INC.;
FRESENIUS USA
MANUFACTURING, INC.;
FRESENIUS USA MARKETING, INC.

1 **PROOF OF SERVICE**

2 I am employed in the County of San Mateo. My business address is Fish &
3 Richardson P.C., 500 Arguello Street, Suite 500, Redwood City, California 94063.
I am over the age of 18 and not a party to the foregoing action.

4 I am readily familiar with the business practice at my place of business for
5 collection and processing of correspondence for personal delivery, for mailing with
United States Postal Service, for facsimile, and for overnight delivery by Federal
Express, Express Mail, or other overnight service.

6 On April 16, 2014, I served a copy of the foregoing document(s) on the
interested parties in this action by placing a true and correct copy thereof, enclosed
in a sealed envelope, and addressed as follows:

7 **Counsel for Plaintiff:**

8 Hector G. Gancedo (SBN 132139)
9 GANCEDO LAW FIRM, INC.
10 130 S. Euclid Avenue, Suite 2
11 Pasadena, CA 91101
12 Telephone: (626) 577-2500
13 Fax: (626) 577-2555

14 Stephen C. Ball (SBN 119463)
15 BALL & BONHOLTZER
16 300 North Lake Avenue, Suite 1000
17 Pasadena, CA 91101
18 Telephone: (626) 793-2117
19 Fax: (626) 793-3198

20 **MAIL:**

21 Such correspondence was deposited, postage fully paid,
22 with the United States Postal Service on the same day in
the ordinary course of business.

23 **PERSONAL:**

24 Such envelope was delivered by hand to the offices of the
addressee.

25 **FACSIMILE:**

26 Such document was faxed to the facsimile transmission
27 machine with the facsimile machine number stated above.
Upon completion of the transmission, the transmitting
28 machine issued a transmission report showing the
transmission was complete and without error.

29 **E-MAIL:**

30 Such document was transmitted by electronic mail to the
addressees' email addresses as stated above.

31 **FEDERAL
EXPRESS:**

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the ordinary course of business with a facility regularly
33 maintained by Federal Express.

34 **EXPRESS
MAIL:**

35 Such correspondence was deposited on the same day in
the ordinary course of business with a facility regularly
36 maintained by the United States Postal Service.

OVERNIGHT DELIVERY: Such correspondence was given on the same day in the ordinary course of business to an authorized courier or a driver authorized by that courier to receive documents.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct.
Executed on April 16, 2014, at Redwood City, California.

/s/ Cecilia Acosta

Cecilia Acosta

1 Juanita R. Brooks (SBN 75934)
2 brooks@fr.com
3 Roger A. Denning (SBN 228998)
denning@fr.com
4 Olga I. May (SBN 232012)
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5 San Diego, California 92130-2081
Telephone: (858) 678-5070
6 Facsimile: (858) 678-5099

7 Tamara Fraizer (SBN 215942)
fraizer@fr.com
8 FISH & RICHARDSON, P.C.
500 Arguello Street, Suite 500
9 Redwood City, CA 94063
Telephone: (650) 839-5070
10 Facsimile: (650) 839-5071

11 Attorneys for Defendants FRESENIUS MEDICAL CARE HOLDINGS, INC.,
12 FRESENIUS MEDICAL CARE NORTH AMERICA, INC., FRESENIUS USA,
13 INC., FRESENIUS USA MANUFACTURING, INC., and FRESENIUS USA
MARKETING, INC.

14 UNITED STATES DISTRICT COURT

15 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

16 JEFF JENKINS, and MARY ELEANOR
17 JENKINS, individually and on behalf of
the Estate of BILLY JOE JENKINS;
MARILYN BAUMGARDEN,
18 individually and on behalf of the Estate
of DONALD EUGENE
KAMPHEFNER; SUZETTE ABBOTT,
19 individually and on behalf of the Estate
of JOSEPH KIDA; DIANE
WILKERSON , individually and on
behalf of the Estate of ALMA LOWE;
20 MARLENE MANLEY, individually and
on behalf of the Estate of JAY PETE
MANLEY, JR.; SHALESE VAULX,
individually and on behalf of the Estate
21 of VERINDA ELIZABETH
MATTHEWS; JOSEPH MCKINNEY,
22 individually and on behalf of the Estate
of LUETANGER MCKINNEY;
HORTENSE MILLER, individually and
23 on behalf of the Estate of NAPOLEON
MILLER;

24 Case No. _____

25 **ATTACHMENT B TO CIVIL
COVER SHEET (LIST OF
DEFENDANTS)**

26 Plaintiffs,

1 vs
2 FRESENIUS MEDICAL CARE
3 HOLDING, INC., FRESENIUS
4 MEDICAL CARE HOLDINGS, INC.
5 d/b/a FRESENIUS MEDICAL CARE
6 NORTH AMERICA, INC., FRESENIUS
7 USA, INC., FRESENIUS USA
8 MANUFACTURING, INC.,
9 FRESENIUS USA MARKETING, INC.,
10 FRESENIUS USA SALES, INC.,
11 WALTER L. WEISMAN, and DOES 1-
12 50, Inclusive,

13 Defendants.

14 1. Defendant Fresenius Medical Care Holdings, Inc. d/b/a Fresenius
15 Medical Care North America (improperly named in the Complaint as "Fresenius
16 Medical Care Holding, Inc.") is a corporation organized under the laws of the State
17 of New York and has its principal place of business in Waltham, Massachusetts.
18 Fresenius Medical Care Holdings, Inc. is therefore a citizen of the State of New
19 York and the State of Massachusetts for purposes of diversity jurisdiction. *See* 28
U.S.C. § 1332(c)(1). Fresenius Medical Care Holdings, Inc. is not now, and was
not at the time of the filing of the Complaint and all intervening times, a citizen of
the State of Colorado, Missouri, Georgia, Michigan, Virginia, Ohio, Minnesota, or
Alabama.¹

20 2. Defendant Fresenius USA, Inc. is a corporation organized under the
21 laws of the State of Massachusetts and has its principal place of business in
22 Waltham, Massachusetts. Fresenius USA, Inc. is therefore a citizen of the State of
23 Massachusetts for purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1).
24 Fresenius USA, Inc. is not now, and was not at the time of the filing of the

25
26
27 ¹ The Complaint also names Fresenius USA Sales, Inc. as a defendant.
28 Fresenius USA Sales, Inc. was dissolved in March 2010.

1 Complaint and all intervening times, a citizen of the State of Colorado, Missouri,
2 Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

3 3. Defendant Fresenius USA Manufacturing, Inc. is a corporation
4 organized under the laws of the State of Delaware and has its principal place of
5 business in Waltham, Massachusetts. Fresenius USA Manufacturing, Inc. is
6 therefore a citizen of the State of Delaware and the State of Massachusetts for
7 purposes of diversity jurisdiction. *See* 28 U.S.C. § 1332(c)(1). Fresenius USA
8 Manufacturing, Inc. is not now, and was not at the time of the filing of the
9 Complaint and all intervening times, a citizen of the State of Colorado, Missouri,
10 Georgia, Michigan, Virginia, Ohio, Minnesota, or Alabama.

11 4. Defendant Fresenius USA Marketing, Inc. is a corporation organized
12 under the laws of the State of Delaware and has its principal place of business in
13 Waltham, Massachusetts. Fresenius USA Marketing, Inc. is therefore a citizen of
14 the State of Delaware and the State of Massachusetts for purposes of diversity
15 jurisdiction. *See* 28 U.S.C. § 1332(c)(1). Fresenius USA Marketing, Inc. is not
16 now, and was not at the time of the filing of the Complaint and all intervening
17 times, a citizen of the State of Colorado, Missouri, Georgia, Michigan, Virginia,
18 Ohio, Minnesota, or Alabama.

19 5. Before its dissolution on March 29, 2010, Fresenius USA Sales, Inc.
20 was a corporation organized under the laws of the State of Massachusetts and had
21 its principal place of business in Waltham, Massachusetts. Fresenius USA Sales,
22 Inc. was therefore a citizen of the State Massachusetts for purposes of diversity
23 jurisdiction. *See* 28 U.S.C. § 1332(c)(1). Fresenius USA Sales, Inc. is not now,
24 and was not at the time of the filing of the Complaint and all intervening times, a
25 citizen of the State of Colorado, Missouri, Georgia, Michigan, Virginia, Ohio,
26 Minnesota, or Alabama.

27
28

6. Defendant Walter L. Weisman is alleged to reside in Los Angeles County, California.

Dated: April 16, 2014

Respectfully Submitted,

/s/ Tamara Fraizer
Tamara Fraizer (SBN 215942)
Fish & Richardson P.C.
500 Arguello Street, Suite 500
Redwood City, CA 94063
Telephone: (650) 839-5070
Facsimile: (650) 839-5071
fraizer@fr.com

Counsel for Defendants
FRESENIUS MEDICAL CARE
HOLDINGS, INC.; FRESENIUS
MEDICAL CARE NORTH AMERICA,
INC.; FRESENIUS USA, INC.;
FRESENIUS USA
MANUFACTURING, INC.;
FRESENIUS USA MARKETING, INC.

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Express, Express Mail, or other overnight service.

6 On April 16, 2014, I served a copy of the foregoing document(s) on the
interested parties in this action by placing a true and correct copy thereof, enclosed
in a sealed envelope, and addressed as follows:

7 **Counsel for Plaintiff:**

8 Hector G. Gancedo (SBN 132139)
9 GANCEDO LAW FIRM, INC.
10 130 S. Euclid Avenue, Suite 2
11 Pasadena, CA 91101
12 Telephone: (626) 577-2500
13 Fax: (626) 577-2555

14 Stephen C. Ball (SBN 119463)
15 BALL & BONHOLTZER
16 300 North Lake Avenue, Suite 1000
17 Pasadena, CA 91101
18 Telephone: (626) 793-2117
19 Fax: (626) 793-3198

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I declare under penalty of perjury that the above is true and correct.
Executed on April 16, 2014, at Redwood City, California.

/s/ Cecilia Acosta

Cecilia Acosta